

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 881 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJ

Versus

ANUPKUMAR JIVRAJ MAHESHWARI

Appearance:

MR RC KODEKAR, APP for Appellant
MR CH VORA for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/10/1999

ORAL JUDGEMENT

1. The appellant - State of Gujarat has filed this Appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the judgment and order dated November 18, 1991, passed by the learned Chief Judicial Magistrate, First Class, Bhuj, in Criminal Case No. 9869

of 1988, whereby the respondent was acquitted for the offence punishable under Section 420 of the Indian Penal Code.

2. The respondent had applied through Employment Exchange and Office of Social Welfare Officer, District Panchayat, Kutch - Bhuj, in response to the selection of Armed Police Guard. Totally, 1764 candidates applied for the said posts. On December 3, 1986, interview calls were sent to all the candidates to remain present at Police Head Quarter Parade Ground, Bhuj. In all 760 candidates remained present out of 1764 candidates, who had applied for the said post. The respondent was placed at Sl.No.78 and after the interview, his name appeared at Sl.No.35 of the select list. The respondent was asked by the authority to produce original School Leaving Certificate and a surety bond in the prescribed form. After scrutiny of the certificate produced by the respondent, DSP, Kutch Bhuj, appointed the respondent on temporary basis as Armed Police Guard by his Order dated March 10, 1987. Pursuant to the said order, the respondent remained present for training on March 23, 1988. It was revealed that the respondent had shown in the surety bond his birth place at village Bayad, taluka Mandavi, District Kutch, and he had also stated that his sister-in-law (Bhabhaji) was serving in Social Welfare Department.

3. This misrepresentation was detected by the DSP's Office, Kutch - Bhuj. Therefore, one Mr. Manojkumar Devaji Maheshwari, Junior Clerk, in the DSP's office lodged FIR against the respondent at Bhuj City Police Station, for the offence punishable under Sec. 420 IPC, which was numbered as CR-I 108 of 1988. Police Sub-Inspector R.S. Rana of Bhuj City Police Station carried out the investigation and recorded the statements of the complainant and collected evidence and arrested the respondent. On completion of the investigation, PSI Mr. Rana submitted charge sheet against the respondent for the offence punishable under Section 420 of the IPC in the court of learned Chief Judicial Magistrate, Kutch Bhuj, which was numbered as Criminal Case No. 9869 of 1988.

4. Charge - Exhibit 6 was framed against the respondent for the offence punishable under Sec.420 of IPC by the learned Judicial Magistrate, First Class, Bhuj. The said charge was read over and explained to the respondent. The respondent while pleading not guilty to the charge and claimed to be tried. To prove the case against the respondent, the prosecution examined the

following witnesses :

- (i) PW1 Manoj Maheshwari - Exh. 8
- (ii) PW2 Bababhai Baluram - Exh. 22
- (iii) PW3 Laljibhai Pachan - Exh. 26
- (iv) PW4 Prashantvadan M.Vora - Exh. 30
- (v) PW5 Jayendrabhai Morajibhai - Exh. 31
- (vi) PW6 Maganbhai Hargovinddas - Exh. 34
- (vii) PW7 Ratanlal Raghunath - Exh. 35
- (viii) PW8 Laltasing Jivraj - Exh. 39
- (ix) PW9 I.O. Rajendrasing Sajjansing - Exh. 40

5. The prosecution has also produced documentary evidence, such as, xerox copies of the select list, School Leaving Certificate of the respondent, Appointment Order issued by the DSP's Office, Bhuj, Surety bond, Caste Certificate, Xerox copies of the Passport of respondent's parents, etc. to prove the charge against the respondent. On completion of the prosecution evidence, the respondent was questioned generally by the learned Magistrate and his statement came to be recorded under Section 313 of the Code of Criminal Procedure, 1973. The respondent in his statement denied that he had ever executed the letter of attestation in the DSP Office. The respondent in his further statement had stated that he had not obtained caste certificate. He further stated that false documents have been created against him and he is falsely involved in the present case and he had not committed offence with which he was charged.

6. The learned Judicial Magistrate First Class, Bhuj, after appreciating the oral as well as documentary evidence and the arguments advanced by the learned advocate of both the sides, concluded that the prosecution had failed to prove the letter of attestation was executed by the respondent at the time of joining the service as Armed Guard in the DSP Office at Bhuj. It was also concluded by the learned Magistrate that the Exhibits 15, 16 and 17 were not executed in the presence of the complainant. It was also concluded by the learned Metropolitan Magistrate that the prosecution had not proved that the respondent himself had executed the letter of attestation before the DSP. It was also concluded that the letter of attestation was not signed by two witnesses as mentioned in the prescribed form. The learned Metropolitan Magistrate further observed that the order of DSP authorizing the complainant to prosecute the respondent was also not produced at the trial. The learned Magistrate further observed that since the letter of attestation was not proved to have been executed

before DSP and it was not signed by two witnesses, it cannot be treated as valuable security and therefore, the prosecution has failed to prove the guilt against the respondent for the offence punishable under Sec. 420 of the IPC.

7. On the basis of the above referred to conclusion, the learned Judicial Magistrate, First Class, Bhuj, acquitted the respondent by the impugned judgment and order dated November 18, 1991, which has given rise to the filing of the present Appeal by the Appellant - State of Gujarat.

8. Learned Additional Public Prosecutor Mr. R.C. Kodekar, has taken me through the entire evidence produced on the record of this case and has submitted that the respondent was migrated from Pakistan and his birth place was Karachi (Pakistan). The respondent had misrepresented the office of the District Superintendent of Police, Bhuj, by submitting letter of attestation that his birth place was Bayad instead of Karachi - Pakistan. It is submitted by the learned Addl. Public Prosecutor that the School Leaving Certificate, which is produced at Exh. 23, would indicate that the birth place of the respondent was Karachi (Pakistan). Learned APP has vehemently submitted that the learned Metropolitan Magistrate has totally misread the documentary evidence produced by the prosecution and has erred in acquitting the respondent for the offence punishable under Sec. 420 of the IPC which cannot be taken very lightly.

9. Learned counsel for the respondent Mr. C.H. Vora, on the other hand, has submitted that the prosecution had failed to prove the letter of attestation was executed by the respondent in the presence of the District Superintendent of Police. It is submitted by the learned counsel for the respondent that School Leaving Certificate - Exh. 23 was got up document as birth place - Karachi (Pakistan) was subsequently added in the certificate, which seriously raises doubts about its genuineness. Learned counsel for the respondent has further submitted that the complainant before lodging the complaint against the respondent, had not produced the letter of DSP, authorizing him to lodge the complaint against the respondent for the alleged offence. At the end, the learned counsel for the respondent has submitted that the reasons for acquittal recorded by the learned Metropolitan Magistrate cannot be called perverse or palpably wrong as held in In 1996 (2) GLH 206, wherein the Apex Court has laid down the principle that under what circumstances the appellate court should interfere

with the order of acquittal recorded by the Trial Court.

10. The submission of the learned Addl. Public Prosecutor that the respondent had misrepresented before the authority by incorrectly stating his birth place at village Bayad and has committed serious offence under Section 420 of the IPC, deserves to be rejected. The letter of attestation - Exh.17 does not bear the signature before whom it was executed. Further more, signature of two witnesses are not obtained in the letter of attestation. In my view, the learned Metropolitan Magistrate was justified in not placing reliance on Exh.17, which is the letter of attestation. The prosecution had also not proved the case beyond the reasonable doubt that the letter of attestation was executed by the respondent in the presence of the District Superintendent of Police, Bhuj. If the execution of the attestation of the letter - Exh.17 is not proved to have been executed before the Head of the Department, then it cannot be said that the respondent had misrepresented before the authority about his birth place. The reasoning given by the learned Magistrate for disbelieving the documentary evidence produced by the prosecution witnesses are just and proper. In the criminal trial, heavy burden lies on the prosecution to prove the guilt of the accused. In the present case, the prosecution case totally hinges on the letter of attestation - Exh.17, which in my opinion, cannot be said to have been executed by the respondent in presence of the District Superintendent of Police, Bhuj. The respondent might have been dismissed from service but, so far as the criminal trial is concerned, the prosecution has failed to prove the guilt of the respondent beyond the reasonable doubt. The prosecution has also not placed on record the order of the District Superintendent of Police, authorising the complainant to lodge complaint against the respondent for the alleged offence. The letter of attestation is in a prescribed printed form and it is to be executed before the District Superintendent of Police. In my opinion, it was not executed before the District Superintendent of Police as there was no official seal of the District Superintendent of Police on the letter of attestation.

11. I have carefully gone through the oral evidence of the prosecution witnesses and the appreciation of it by the trial court. In my opinion, under no circumstances, it can be said that the appreciation of evidence by the learned Metropolitan Magistrate is palpably wrong or perverse. The benefit of doubt extended by the learned Metropolitan Magistrate in favour

of the respondent cannot be said to be perverse, unreasonable, unjust or against the evidence on record. Therefore, I am of the opinion that the order of the acquittal does not call for any interference in this Appeal filed by the Appellant State of Gujarat.

12. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor had failed to dislodge the reasons given by the learned Magistrate in order to convince this court to take a view contrary to the one already taken by the learned Magistrate. As held by the Apex Court in 1996 (2) GLH 206 that unless the finding of the trial court are that unless the finding of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable, the appellate court should not interfere with the findings of facts recorded by the trial court. It is also ruled by the Apex Court in the above referred to decision that if on the re-appreciation of evidence, another view than one taken by the trial court is possible, cannot constitute a valid and sufficient ground to interfere with the acquittal order.

13. For the foregoing reasons, I do not find any substance in the Appeal. The Appeal, therefore, fails and is dismissed. The bail bond executed by the respondent shall stand cancelled.

p.n.nair